IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

On Appeal from the Supreme Court of the State of Arizona

BRIEF ON THE MERITS OF *AMICUS CURIAE*, LEGAL AID SOCIETY OF MARICOPA COUNTY, STATE OF ARIZONA

INTEREST OF AMICUS

Amicus, Maricopa County Legal Aid Society, is a non-profit corporation whose attorneys provide legal services

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Amicus, Maricopa County Legal Aid Society, is a non-profit corporation whose attorneys provide legal services

for indigent persons in Maricopa County, State of Arizona. It is also a delegate agency of the Office of Economic Opportunity, Legal Services Division, under the Federal Economic Opportunity Act.

Amicus is vitally interested in the one year durational residence requirement for indigent medical care at the Maricopa County Hospital because many of the clients represented by its staff attorneys are adversely affected by the Statute. The Arizona Supreme Court decision in *Maricopa County v. Superior Court, County of Maricopa*, 108 Ariz. 373, 498 P.2d 461 (1972) seriously affects the Society's clientele. Many of our clients are permanent-less than twelve month residents of Maricopa County, State of Arizona and are therefore unable to use the Maricopa County Hospital unless and until any adverse medical condition they suffer becomes emergent. This is a Statute that

causes and encourages poverty and can turn a self-sufficient individual into a welfare recipient.

The Amicus supports the position of Appellants which seeks the reversal of the Arizona Supreme Court decision in the above-entitled case.

Amicus has received the written consent of all of the parties in the above-entitled case to file a brief on the merits. Amicus requests this Court enter any appropriate order in this regard.

SUMMARY OF ARGUMENT

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Statistics show that there is a large migration of interstate travelers to Arizona, who have the intention to settle and abide permanently in this State. Their right to travel is clearly implied by a one year durational residence law which denies to them medical care for such

illnesses as heart, kidney and cancer diseases.

The alleged distinction between interstate as compared with intrastate travel, because of the county durational residence law, is not significant in the determination of the present case. This Court in *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) was confronted with a county durational residence statute and ruled said law unconstitutional.

Amicus has attempted to demonstrate that the fiscal integrity argument of the Appellees is "over extended". In fact, the one year durational residence requirement would seem to increase the cost of indigent medical care to the Appellees. In addition, there are other means of financing medical care such as state-wide funding and/or participation in the Federal Medicaid program. Finally, Amicus

contends that there is a substantial difference between the university tuition-durational residence situation and the present case of medical care. Amicus points out that the Arizona Welfare Department has established a list of criteria to determine residence and the Arizona Legislature in 1965 enacted a Medical Assistance for Aged law, which contained only a residency requirement.

In conclusion, Amicus submits that this country was built and its people prospered by a mobile population and that the one year durational residence law for medical care clearly impinges on that mobility. Therefore, the present law is unconstitutional and the judgment of the Court below should be reversed.

ARGUMENT

I THE ONE YEAR DURATIONAL RESIDENCE REQUIREMENT FOR MEDICAL CARE, WHICH IS A FUNDAMENTAL NECESSITY OF LIFE, PENALIZES THE RIGHT TO TRAVEL

Justice Stewart in *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) commented on the one year durational residence law for welfare benefits by stating:

> "And it further follows, as the Court says, that any other purposes offered in support of a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a *compelling* government interest." *Shapiro, supra* at 394 U.S. 643-644.

Accord: San Antonio Independent School District et al. v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). Along the same lines, the majority stated in *Shapiro*:

> "and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a

compelling governmental interest, is unconstitutional." *Shapiro, supra* at 394 U.S. 634

Several Justices of the Supreme Court have implied that a one year durational residence requirement *per se* constitutes a penalty on the right to travel. *Dunn v. Blumstein*, 405 U.S. 330, 342 and fn. 12, 92 S. Ct. 995, 1003 and fn. 12, and 31 L. Ed. 2d 274, 284 and fn. 12 (1972) and *Vlandis v. Kline*, 41 L.W. 4796, 4801 (June 11, 1973). However, there has not been a full consideration of this view of a durational residence requirement by this Court nor does Amicus contend in the present case that the one year durational residence law for medical care *per se* penalizes the right to travel.

Most of the lower court decisions have analyzed the cases dealing with durational residence laws in terms of whether the benefit denied by the imposition of a one year durational residence

requirement deters[1] the right to travel.

The deterrence analysis usually has looked at the purpose for which the durational residence law was enacted and/or the effect of said law on the right to travel. This two pronged approach had its genesis in the statements in *Shapiro, supra*, where the Court stated:

> "There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific

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[1] In *Cole v. Housing Authority of the City of Newport*, 435 F.2d 807 (1st Cir. 1970), the Court rejected the deterrence approach to the durational residence situations. *Cole, supra* at pg. 810 and fn. 8 and 9. Instead, the *Cole* Court relied on a definition of travel to include only the "migration with intent to settle and abide" to invalidate a durational residence law. *Cole, supra* at 811. It will be the position of Amicus in the present case that the one year durational residence requirement for medical care under either analysis clearly impinges on the right to travel.

objective of these provisions. . . .[2]

. . . An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute."[3] *Shapiro, supra* at 394 U.S. 628-629. (footnotes added)

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[2]The *Shapiro* opinion also noted that one of the lower courts had indicated "that if the purpose of the statute was 'to erect a barrier against the movement of indigent persons into the State or to effect their prompt departure after they have gotten there' it would be 'patently improper and its implementation plainly impermissible'." *Shapiro, supra* at 394 U.S. 626-627.

[3]Of course, the Supreme Court indicated in *Dunn v. Blumstein, supra*, that the sole emphasis on deterrence in analyzing the extent of *Shapiro* was misplaced. This Court stated in *Dunn*: "the majority found no need to dispute the 'evidence that few welfare recipients have in fact been deterred [from moving] by residence requirements'. *Id.*, at 650 (Warren, C.J., dissenting); see also *id.*, at 671-672 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred." *Dunn, supra* at 405 U.S. at 340.

While many courts have struck down durational residence laws in relation to various types of benefits based on *Shapiro* and other courts have upheld such laws, the brief of Amicus will focus on cases which have dealt with durational residence laws which denied benefits relating to education and health needs.

This Court is well aware that in *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), *aff'd* 401 U.S. 985 (1971), the Supreme Court affirmed a District Court decision which had upheld a one year durational residence requirement for university tuition.[4]

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[4]The *Starns* decision, as well as the decision in *Kirk v. Board of Regents of Univ. of California*, 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), *appeal dismissed*, 396 U.S. 554 (1970), had distinguished the durational residence-tuition situation from the durational residence-welfare case by stating: "While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. (Cont'd to pg. 11)

This Court's explanation in *Vlandis, supra,* of its summary affirmance of the *Starns* case did not indicate whether the one year durational residence Statute was constitutional because it did not clearly impinge on the right to travel[5] or whether the state had met the compelling interest test because:

Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning do not involve similar risks. Nor was petitioner (unlike the families in *Shapiro*) precluded from the benefit of obtaining higher education. Charging higher tuition fees to nonresident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents." *Starns, supra* at 238.

[5]In Note, *Non Resident Tuition,* 55 Minn. L. Rev. 1139, 1149-1150 (1971), the author commented: "However, the right to travel has not yet been extended so far

(Cont'd to pg. 12)

"of the special problems involved in determining the bona fide residence of college students who come from out of State to attend that State's public university." *Vlandis, supra* at 41 L.W. 4799.

Several cases have dealt with one year durational residence requirements for medical care. All of the courts except the Arizona Supreme Court in the present case have ruled that such laws are unconstitutional. See *Board of Supervisors, Pima County v. Robinson,*

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as to protect against the type of infringement which nonresident tuition creates. Nonresident tuition deters students who wish to travel to another state for a time (e.g. four years) but who do not wish to change residence from their original home state. In its broadest extension to date, the right to travel interstate has been used to protect the right of persons to government benefits in the states to which they migrate, that is, in the states in which they take up residence. Before nonresident tuition could be struck down, the right to travel would have to be extended one step further to protect the rights of persons to government benefits in any state to which the person travels. See also *Cole, supra* at pg. 811.

10 Ariz. App. 238, 457 P.2d 951 (1969), *vacated as moot*, 105 Ariz. 280, 463 P.2d 536 (1970); *Crapps v. Duval County Hospital*, 314 F. Supp. 181 (M.D. Fla. 1970); *Arnold v. Halifax Hosp. Dist.*, 314 F. Supp. 277 (M.D. Fla. 1970); and *Valenciano v. Bateman*, 323 F. Supp. 600 (D. Ariz. 1971).

In *Vaughan v. Bower*, 313 F. Supp. 37 (D. Ariz. 1970), *aff'd mem.*, 400 U.S. 884 (1970), this Court affirmed an Arizona District Court decision which had held that the Arizona one year durational residence law for commitment to a state mental hospital was unconstitutional. The District Court opinion discussed the *Kirk* case, *supra*, and the *Board of Supervisors, Pima County* decision, *supra*, as follows:

> "In the two cases to date to consider the ramifications of *Shapiro* in a non-welfare contest, consistent results have been reached on the basis of the essential nature of the public benefit involved. An

intermediate appellate court in California has held that the reasoning of *Shapiro* does not render invalid California's one year residence requirement for receipt of free tuition benefits at a state university. *Kirk v. Board of Regents*, Cal. App., 78 Cal. Rptr. 260 (1969), appeal dismissed, 396 U.S. 554, 90 S. Ct. 754, 24 L. Ed. 2d 747. The thrust of the *Kirk* holding is that *Shapiro* involved benefits essential to the 'preservation of life and health' which necessarily have a close functional relationship with the right to travel. Since free education did not constitute such a fundamental aspect of basic survival and subsistence, its denial would not be a consideration of sufficient magnitude as to discourage or prohibit interstate travel.

In *Board of Supervisors, Pima County v. Robinson*, 10 Ariz. App. 238, 457 P.2d 951 (1969), *vacated as moot*, 105 Ariz. 280, 463 P.2d 536 (1970), the Arizona Court of Appeals held unconstitutional in light of *Shapiro* a statutory requirement that in order to be eligible for non-emergency public hospitalization, medical care, or out-patient relief an indigent must have been a resident of that county for the preceding twelve months. The implication is that basic non-emergency medical care and

treatment are 'necessities of life' within the meaning of *Shapiro*.

The case herein falls somewhere between *Shapiro* and *Robinson* on the one hand and *Kirk* on the other." *Vaughan, supra* at 41-42.

Turning to the specific Statute in the present case, A.R.S. § 11-297,[6] the legislative history in regard to the Statute is rather vague.

During the 1930's, Arizona allegedly became a center for indigent persons fleeing from the dust-stormed midwest because of respiratory illnesses.[7]

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[6]See Laws 1937, 3rd Spec. Sess., Ch. 4 § 4.

[7]At the same time the original A.R.S. § 11-297 was passed, the Arizona House adopted House Memorial No. 2, which was introduced by Mr. Petersen, a representative of Maricopa County. (see Journal of the House, Thirteenth Legislature of the State of Arizona 1937, Third Special Session, pg. 284.) The Memorial read as follows:
(Cont'd to pg. 16)

"To the Congress of the United States: Your memorialist respectfully represents:

The therapeutic value of Arizona's pure, healthful air and dry climate, in the treatment of such ailments as arthritis, neuritis, asthma, bronchitis, sinusitis, and tuberculosis, is well known. This fame brings to Arizona many persons seeking health, particularly tuberculars.

Of these visitors an exceedingly large number are in such poor circumstances that if not immediately they soon become charges upon public charity. Since the dust storms of the middle western states have grown to the proportions they have in frequency and severity there has been an exceedingly large influx of destitute sufferers from ailments of the classes above mentioned. It is estimated that of Arizona's indigent sick eighty-six per cent are properly classifiable as transients.

Not to care for these people is of course unthinkable. The commonest dictates of humanity require that they be given medical aid. It is not just, however, that the burden should fall wholly upon Arizona. In some measure the responsibility is national in character.

(Cont'd to pg. 17)

There was increasing pressure from the rural counties to require Maricopa County to take up the full burden of indigent medical care.[8]

> Wherefore your memorialist, the House of Representatives of the State of Arizona, requests:
>
> 1. That the Social Security Act be so amended as to extend its provisions for federal co-operation in the care of the needy citizens over the class known as the indigent sick."
>
> Adopted by the House August 2, 1937.
>
> Filed with the Secretary of State August 2, 1937.

1937 Session Laws Arizona, Thirteenth Legislature, Third Special Session, pgs. 284-285.

It should be noted that a residency requirement would have met the concern of the Arizona House of Representatives. In *Board of Supervisors, Pima County, supra* at 457 P.2d. 953, this possibility was left open. See also, *Cole, supra* at 811.

[8]The counties in Arizona were responsible for expenditures to take care (Cont'd to pg. 18)

This can be seen by the comments of several representatives of Maricopa County, who voted against the original A.R.S. § 11-297. A typical comment was as follows:

> "Mr. Speaker:
>
> In voting 'no' on this bill I wish to state that I am not influenced by the administration as I do not know, nor have I been told by any administration representative, the wishes of the governor.

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of the indigent sick until 1932. See § 975, R.S. 1901; § 2420, R.S. 1913, and § 776, R.C. 1928. In 1933, the Arizona Legislature created the State Board of Public Welfare. One of the duties of the Board was: "W. To aid and cooperate with the several county board of supervisors in the care and maintenance of the indigent sick and dependent poor, either directly or through the agency of the County Board of Public Welfare and to make necessary expenditures therefor. . . ." Chapter 35, Session Law 1933, pg. 38. In addition, prior to the enactment of the original A.R.S. § 11-297 (see Laws 1937, 3rd Spec. Sess., Ch. 4 ¶ 4), Arizona did not have a residency nor a durational residence requirement. See § 1033, R.S. 1901; § 2486, R.S. 1913, §814, R.C. 1928.

> Maricopa County voted $8,500,00.00 to build her highways without state aid. We pay a large percentage of the gasoline tax which has been, and still is being diverted to the building of highways for other counties.
>
> The care of indigent sick is a charge of the whole commonwealth and unless the state is to assist in this burden, I will be obliged to vote 'no'.
>
> W. W. Mitchell"

Journal of the House, Thirteenth Legislature of the State of Arizona 1937, Third Special Session, pg. 263.[9] In any event, on August 4, 1937, the original A.R.S. § 11-297 was signed by the Governor of Arizona and was enacted into law.[10]

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[9]From the legislative history, it is clear that the original A.R.S. § 11-297 was not passed primarily to turn over the planning of indigent health care to the local governments.

[10]The original A.R.S. § 11-297 (see Laws 1937, 3rd Spec. Session, Ch. 4 § 4) contained a provision which stated "except where treatment is given in the state

(Cont'd to pg. 20)

Earlier in the same year: namely on March 22, 1937, the Arizona Legislature enacted a law to Aid Families with Dependent Children. The Statute had the type of one year durational residence requirement which was struck down in *Shapiro, supra*. See 1937 Session Laws Arizona, Thirteenth Legislature, pg. 343.[11]

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welfare sanitarium, the affidavit shall state that he has been a resident of the State of Arizona for the preceding twelve months". This provision was deleted and now is covered by A.R.S. § 36-261 which contains no residency requirement. An opinion by the Attorney General of Arizona, Op. Atty. Gen. No. 59-21, indicated that a one year durational residence requirement could be imposed. However, the State Tuberculosis Sanitarium does not impose such a requirement.

[11]In 1972, the Arizona Legislature amended A.R.S. § 46-292 and legislatively eliminated the one year durational residence requirement. However, A.R.S. § 46-292(1)(Amended 1972) still reads: "Who has established residence in Arizona at the time of application."

At the very minimum, the original A.R.S. § 11-297 was adopted during a time when durational residence requirements were being enacted to prevent people from migrating from one state to another.[12 & 13]

What cannot be denied is the fact that, today, large numbers of people, who travel to Arizona from outside the State with the intention to settle and abide permanently in Arizona, are penalized by

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[12]In *Vaughan*, *supra* at 313 F. Supp. 42 fn. 3, the Court said: "In absence of any enlightening legislative history, this Court remains mindful of the Supreme Court's observation in *Shapiro* that there is 'weighty evidence' that exclusion of the poor is frequently the specific objective of a residence requirement in the welfare area. 394 U.S. at 628, 89 S. Ct. 1322."

[13]A discussion concerning Arizona's need for a residency requirement for non emergency medical care in contrast to a durational residence requirement for university tuition will be found on pages 48-50, *infra*.

the one year durational residence requirement for medical care.

Statistics, gathered over a number of years by the Arizona Republic, a Phoenix newspaper, and published in "73 Inside Phoenix", show that the migration of permanent newcomers far exceeds the less than year round arrivals. (See Appendix "A" attached to this Brief.)[14] In the 1930's travelers allegedly came to Arizona primarily for their health. The attached Appendix "B" is taken from the "Inside Phoenix" publications for the years of 1966 to 1972. The Appendix indicates that people move to Arizona for various reasons. Health seems to be of decreasing importance in the migration of

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[14]According to the analysis employed in *Cole, supra* at 811, Arizona's one year durational residence law would impinge on the right to travel.

interstate travelers to Arizona.[15]

Finally there is the question of whether the denial of medical care is a 'necessity of life' and therefore would clearly impinge on the right to travel.[16] In the end one has to consider the types of medical problems which people are

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[15]The Phoenix Republic on April 7, 1973 on pg. 6 editorialized as follows: "Arizona no longer is the tuberculosis State, a dubious distinction it held from 1912, the year of its admission to the Union, until 1959 when Alaska became a state and took the TB lead.

"According to statistics from the State Department of Health, Arizona's TB rank dropped from fifth in 1971 to 11th last year."

[16]President Nixon has stated that health is more important than wealth. In *Health, Message From the President of the United States*, 92nd Congress, 1st Session, House Document No. 92-49 (1971) at pg. 18, President Nixon stated: "'It is health which is real wealth,' said Gandhi, 'and not pieces of gold and silver'. That statement applies not only to the lives of men but also to the life of nations. And nations, like men, are judged in the end by the things they hold most valuable."

forced to bear without medical treatment. In *Board of Supervisors, Pima County, supra* at 457 P.2d 952, it was a man who was severely injured in a fire. In *Valenciano, supra*, one of the Plaintiffs, Bertha Valenciano, was denied medical care for the birth of her baby.[17] Another Plaintiff, Eula Knapp, was denied treatment for fainting spells and epilepsy. The other Plaintiff in *Valenciano*, George Knapp, was a diabetic and was denied insulin treatment. See Appendix "C", which was part of Plaintiffs' Complaint filed in the *Valenciano* case and also see *Valenciano, supra* at 601-602. In the present

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[17]In Maricopa County, an indigent pregnant woman can receive emergency medical treatment to give birth to her baby once she goes into labor. Until approximately a year and a half ago, an indigent pregnant woman was denied both emergency and non emergency medical care in giving birth to her baby.

case, Mr. Evaro suffered an acute attack because of his chronic asthmatic and bronchial illness. However, Mr. Evaro could not obtain from the County Hospital the "required continued medical care for the preservation of his health and well being". *Maricopa County v. Superior Court, County of Maricopa*, 108 Ariz. 373, 374, 498 P.2d 461, 462 (1972)

Other illnesses, which are not being treated due to the durational residence requirement, include heart, kidney and cancer diseases.[18]

In the end, it seems beyond dispute

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[18]Amicus interviewed a young woman, who was refused admittance at the County Hospital, because of the durational requirement. The woman had had a "pap smear" which had proved to be positive. However, the woman did not want to go through the rigors of a lawsuit and sought other means of handling her medical problem. However, there are many people who do not have the knowledge nor the stamina of being able to find alternative means of medical care.

that if the denial of public benefits, "upon which may depend the ability of families to obtain the very means to subsist--food, shelter, and other necessities of life," clearly impinges on the right to travel, then the same holds true for the denial of medical care.

II THE COUNTY DURATIONAL RESIDENCE REQUIREMENT FOR MEDICAL CARE PENALIZES THE RIGHT TO TRAVEL

In the Appellees' Motion To Affirm before this Court, it was stated:

> "Intrastate travel differs from interstate. Numerous cases, including *Shapiro*, imply that the commerce clause is the fountainhead of the constitutional right to travel.[19] As *Shapiro*

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[19]The *Shapiro* opinion stated: "We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision." *Shapiro, supra* at 394 U.S. 630 and fn. 8. See also Justice Stewart's concurring opinion in *Oregon v. Mitchell*, 400 U.S. 112, 285-287, 91 S. Ct. 260, 345-346, 27 L. Ed. 2d 272, 374-375 (1970), where (Cont'd to pg. 27)

itself recognizes, this right stems from 'the nature of our federal union.' The right to travel basically thus reflects the right of the citizens of the several states to travel beyond state borders to the national capitol in Washington, D.C. to redress their grievances.[20] Accordingly, the constitutional right to travel fundamentally views interstate travel within the federal union, rather than intrastate travel within the

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Justice Stewart attributed the source of the right to travel to the Privileges and Immunities Clause of the Fourteenth Amendment.

[20]See Mr Douglas' concurring opinion in *Edwards v. California*, 314 U.S. 160, 178-181, 62 S. Ct. 164, 169-170, 86 L. Ed. 119, 127-129 (1941) where he rejected the argument that the rationale for the right to travel lies in a citizen being able to travel "to the seat of his national government or its offices throughout the country." Even assuming *arguendo* that the rationale for the right to travel was "to travel to the seat of his national government or its offices throughout the country," it is obvious that the Federal Government has offices throughout the State of Arizona and therefore there is the need for the constitutional right to travel within the State.

counties of one state." Appellees' Motion To Affirm at pg. 6. (footnotes added).[21]

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[21]This part of Appellees' Motion concludes by stating: "Furthermore, the fact that the monies involved in the instant case are not federal but rather county-raised suggest that the 'federal' right to travel is not so directly motivated by a desire to reap the benefits of federally-funded and federally-administered programs supported by the nation at large." Motion To Affirm at pg. 6. Of course, this Court stated in *Pease v. Hansen*, 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971): "Whether a welfare program is or is not federally funded is irrelevant to the constitutional principles enunciated in *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600." It also should be noted that the Maricopa County General Hospital has received the following Hill-Burton monies: 1948-$157, 339; 1952-$100,000; 1960-$69,722; 1966-$716,047; and 1968-$1,158,147. See *Hill-Burton Project Register, July 1, 1947-June 30, 1971*, U.S. Department of Health, Education and Welfare, DHEW Publication No. (HSM) 72-4011, pg. 37. Finally, in Kris, *Durational Residency Requirements and the Mass Migration Theory: Getting To The Heart Of The Current Welfare Dilemma*, Wm & Mary L. Rev. 472, 505 (Vol 2 1969-70), Mr. Kris commented: "Attempts to warrant the imposition of residency requirements cannot be justified on the grounds of any mass migration theory. Statistics in this study reveal that no mass migration of welfare seeking indigents has occurred, nor is

Several lower courts have considered the question of whether the constitutional right to travel includes intrastate as well as interstate travel. Most of the cases have arisen because the plaintiff in the particular case was a resident of the state but had been denied some benefits because of a local durational residence requirement. Most of these courts found that there was no distinction between the constitutional right to travel from without the state as opposed to within the state. See *King v. New Rochelle Municipal Housing Authority*, 442 F.2d 646, 648-649 (2nd Cir. 1971), *cert. denied* 404 U.S.

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expected to occur in those states affected by the Court's decision. Those participating states which expect an initial jump of case loads additions, also predict that the increase will reach a constant level in the future. The evidence presented tends to prove that lower income groups will change residence for various reasons and not solely to seek higher assistance benefits."

863 (1971); *Wellford v. Battaglia*, 343 F. Supp. 143, 147 (D. Del. 1972); *Krzewinski v. Kugler*, 338 F. Supp. 492, 498 (D. N.J. 1972); *Cole, supra* at 809 and 811; *Eggert v. City of Seattle*, 505 P.2d 801, 804 (1973) and *Donnelly v. City of Manchester*, 274 A.2d 789, 791 (1971).

In *Hadnott v. Amos*, 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd* 401 U.S. 968 (1971), this Court affirmed a District Court decision in which the lower Court had ruled unconstitutional a one year county and three month precinct durational residence requirements for voters. See *Hadnott, supra* at 320 F. Supp. 114.[22] One of the Plaintiffs, Drake, had "lived

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[22]"Amendment 207 to the Alabama Constitution and Tit. 17, § 12, Code of Alabama, limit the franchise to those who 'shall have resided in the state at least one year, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector'." *Hadnott, supra* at 320 F. Supp. 112.

nearly all his life in Alabama" (*Hadnott, supra* at 114) and had "met the state residency requirements." *Hadnott, supra* at 112.

At another part of the Appellees' Motion To Affirm, it is stated:

> "Therefore, it [A.R.S. § 11-297] makes no distinction between people who have moved from points within the State and people who have moved from points without the State and it applies in like manner to new and old residents of the State who have not completed one year's residence within a particular subdivision." Appellees' Motion To Affirm at pg. 3. (Parenthesis added).

The present case involves a Plaintiff, Mr. Evaro, who was an interstate traveler and is comparable to the Plaintiff in *Dunn, supra*. This Court had no difficulty in *Dunn* in striking down a county durational residence requirement. It is obvious in the present case, as it was in *Dunn, supra*, that the county durational

residence requirement creates a classification between those newly arrived (interstate) bona fide residents of the county and those older residents of the county.[23]

In addition, as Justice Stewart has stated in *San Antonio Independent School District, supra*:

> "Moreover, quite apart from the Equal Protection Clause, a state law that impinges upon a substantive right or liberty created or conferred by the Constitution is of course, presumptively invalid, whether or not the law's purpose or effect is to create any classification." *San Antonio Independent School District*, 41 L.W. 4407, 4425.

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[23]This penalty on the right to travel differs from the illustration of a non-penalty given in *Dunn, supra* at 405 U.S. 342, fn. 12 where the Court said: "Where for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident, instead, *all residents*, old and new, must be of a prescribed age to drive." (emphasis added).

As has been stated earlier, the one year county durational residence requirement for medical care clearly impinges on the right to travel of many interstate movers, who have migrated to Arizona with the intent permanently to settle and abide. (see Appendices "A" and "B").

III A COMPELLING STATE INTEREST IS NOT ESTABLISHED BY THE MERE SHOWING THAT FISCAL OR ADMINISTRATIVE INTERESTS ARE FURTHERED BY A DURATIONAL RESIDENCE REQUIREMENT

A. FISCAL CONSIDERATIONS IN THE PRESENT CASE DO NOT PRESENT A COMPELLING INTEREST

As early as 1969, the Board of Supervisors of Maricopa County was asserting that the elimination of the durational residence law for medical care would increase the costs to the County. In *Board of Supervisors, Pima County, supra*, the Court stated:

"The Amicus Curiae[24] brief presents data which shows that there will be a two percent increase in cost due to an affirmance. The trial judge in his findings of law held fiscal expediency an invalid purpose in any event. We agree." *Board of Supervisors, Pima County, supra* at 457 P.2d 952-953 (footnote added).

In the present case, Maricopa County estimates that the elimination of the one year durational residence requirement will mean an increase of expenditures of approximately $2,500,000 (see A-17). This additional cost allegedly would mean increasing the ad valorem property tax by 8.45%. (see A-21).[25]

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[24] The Amicus Curiae in the *Board of Supervisors, Pima County* case, *supra*, was the County of Maricopa represented by William Carter. *Board of Supervisors, Pima County, supra* at 457 P.2d 951.

[25] Mr. G. W. Bickel, PhD. of the Legal Action Support Project, Bureau of Social Science Research, located at 1990 'M' Street, N.W., Washington, D.C., analyzed the affidavits presented by the Appellees in the present case. He stated:

"The figures presented by Maricopa County as estimates of the increased hospital, clinic and nursing-home utilization

which could be expected to occur if the one-year residence requirement for indigents were eliminated are curious indeed. While these figures purport to measure, and are presented as measuring, the increased *demand* for hospital, clinic and nursing-home services that would result, they are (in the case of hospital and clinic) rather the County's estimates of the optimum feasible *capacity* of these facilities, or in other words, of the maximum *supply* of such services that could be provided within existing facilities.

Now nowhere is it explained why an estimate of *supply* capacity should be taken as a reasonable representation of an increased *demand* for such services. Presumably the County Officials are contending (implicitly here) that in the absence of the residence requirement demand for medical services by indigent newcomers to Maricopa County would simply be indefinitely expandable: that is, would swell to whatever level the capacity of the facilities permits, or indeed would be even higher than that level and should be restricted, by some other means, to the capacity of the existing facilities.

Be that as it may, *no actual estimates* whatsoever are given by the County, or even attempted, as to what the expected increase in *demand as such* for hospital and clinic services would be among the indigent newcomer population of Maricopa County.

With regard to the estimated increase in demand for nursing home care, here the County provides *absolutely no rationale whatsoever* for the figures it presents. The increased demand estimates are simply asserted, with no attempt made to provide factual or logical substantiation, but solely attributed to 'discussions with our personnel' and other unnamed 'representatives' of various

(Cont'd to pg. 36)

(Cont'd to pg. 35)

Even assuming th[illegible]at the figures pre-

sented by the Appelle[illegible]es are reasonable,

Maricopa County in re[illegible]cent years has adopted

increased budgets for [illegible] the Maricopa General

Hospital, which are c[illegible]omparable to the al-

leged projected increa[illegible]ase.[26]

State and County agenc[illegible]cies.

G. W. Bickel, PhD
Bureau of Social Science
Research, Inc."

Moreover, the Legal Ac[illegible]ction Support Pro-

ject, using the Unite[illegible]d States Census

data and also the data[illegible]a reported in the

"Inside Phoenix" publi[illegible]ications, developed

two estimates as to th[illegible]he cost to Maricopa

County if the duration[illegible]nal residence re-

quirement were abolish[illegible]hed. Based on pop-

ulation figures from 1[illegible]1969-1971, the

Project calculated it [illegible]would cost the

County approximately $[illegible]$899,000. If the

population figures wer[illegible]re for 1971 only,

then the additional co[illegible]ost to the County

would be approximately [illegible]y $1,058,450.

[26]The following ar[illegible]re the adopted bud-

gets for the Maricopa [illegible]County General

Hospital: 1970-71 / $[illegible]$12,184,000; 1971-

72 / $15,955,446; 1972[illegible]2-73 / $21,206,047.

See Board of Superviso[illegible]ors, *Annual Budget*

for the years 1970-71[illegible]; 1971-72; 1972-73.

According to Mr. Willi[illegible]iam J. Feldmeier,

Project Director for t[illegible]the Board of Super-

visors of Maricopa Cou[illegible]unty, the estimated

budget for the County [illegible]Hospital for 1973-

74 is $23,250,000.

Indeed, it seems ironic that the most populous and wealthiest County in the State of Arizona should be the most vociferous in its opposition to the elimination of the durational residence requirement.[27 & 28] In the end, the Appellees' opposition seems self-defeating for most authorities agree that the postponement in treatment of illness increases

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[27] See pages 18-19, *supra*.

[28] Due to the *Board of Supervisors, Pima County* decision, *supra*, the Pima County General Hospital was not using the durational residence requirement from August 1969 until September 1972. In addition, the Pinal County Hospital has not been employing the durational residence test since March 1971. See *Valenciano, supra*. The differences between Pinal County and Maricopa County are substantial in regard to the resources available to meet their indigent medical care obligations when one considers that (1) Pinal County has approximately 35% of its population earning less than $6,000 as compared to 24% for Maricopa County, and (2) only 31% of Pinal's population earns over $10,000 as compared to 49% for Maricopa County. See Valley National Bank, *Arizona Statistical Review*, 28th Annual Edition (September 1972) pg. 6.

Indeed, it seems ironic that the
most populous and wealthy county in
the State of Arizona should be the most
restrictive on the opportunities to the minor-
ity portion of the county residence re-
gardless of [illegible] It is the duty of the Appel-
late Courts to review self-interesting the
most arbitrary laws that the majority
can threaten of this as interpre-

[illegible] See pages 18-19, supra.

[illegible] to the Board of Supervisors,
County Assessor, supra, the final
County Canvass Report was not using
the additional residence requirement from
August 1972 until September 1972. In
addition, the Pima County Hospital has
not been employing the durational resi-
dence test since March 1972. See [illegible]
[illegible] The differences between
Pima County and Maricopa County are
noteworthy in the resources
available to meet their indigent medical
care obligations. One could consider that
(1) Pima County has approximately 75%
of its population residing less than
50,000 as compared to 44% for Maricopa
County, and (2) only 31% of Pima's
population owns over $10,000 as com-
pared to 49% for Maricopa County. See
Valley National Bank, Arizona Statistical
Review, 25th Annual Edition (September
1972) pp. 6.

its cost.[29] Additionally, statistics compiled by the United States Department of Health, Education and Welfare reveal that members of low income groups are in poorer health than persons with higher incomes. Due to such factors as the quality of housing, nutrition and occupations, indigents are more likely to fall prey to sickness. See *Health Characteristics of Low-Income Persons*, U.S.

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[29]As President Nixon stated: "In most cases our present medical system operates episodically -- people come to it in moments of distress -- when they require its most expensive services. Yet both the system and those it serves would be better off if less expensive services could be delivered on a more regular basis.

If more of our resources were invested in preventing sickness and accidents, fewer would have to be spent on costly cures. If we gave more attention to treating illness in its early stages, then we would be less troubled by acute disease. In short, we should build a true 'health' system and not a 'sickness' system alone. We should work to maintain health and not merely restore it." *Health, supra* at pg. 3.

Department of Health, Education and Welfare, DHEW Publication No. (HSM) 73-1500 (July, 1972).[30]

Turning to the legal problems involved in the Appellees' fiscal argument, this Court has stated:

> "In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' *NAACP v. Button*, 371 U.S. 415, 438 (1963); *United States v. Robel*, 389 U.S. 258, 265 (1967), and must be 'tailored' to serve their legitimate objectives. *Shapiro v. Thompson*, *supra*, at 631. And if there are other, reasonable ways to achieve those goals with a lesser burden

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[30]See O'Rourke, M.D., M.P.H. *Arizona Health Services, A Consultant's Report To The Joint Select Committee on Health Services*, January 17, 1973. The Report stated at page 50: "The loss of income related to medical problems on the part of low income residents whose inability to obtain medical care impedes their vocational rehabilitation. This problem has recently been documented by the Department of Economic Security."

on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)." *Dunn, supra* at 405 U.S. 343.

As has been shown earlier,[31] the Arizona Legislature consciously chose for parochial political reasons to narrow the tax base in regard to financing indigent medical care.[32]

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[31]See note 8, *supra*.

[32]Dr. O'Rourke in his Report asked the question: "Should medical dependents be cared for by local communities or by the state?" His answer was: "All trends in public medical care are toward community based programs with technical assistance provided by a State Department of Health Services in conformity with a rational statewide plan and appropriate financial support.

The state should avoid, whenever possible, the direct operation of personal health services, which are usually better organized when the local community is directly involved in their planning and operation." *Arizona Health Services, A Consultant's Report To The Joint Committee On Health Services*, pg. 37. See also (Cont'd to pg. 41)

(Cont'd to pg. 41)

In Addition, Arizona is the only State in the Union which does not participate in the Federal Medicaid system, 42 U.S.C.A. § 1396 *et. seq.* If Arizona decided to participate in the Federal Medicaid program, then under 42 U.S.C.A. § 1396a(b)(3) Arizona could not impose a durational residence requirement to the extent of Arizona's participation in the Federal program.[33]

Finally, this Court, while recognizing the importance of the state's fiscal integrity, has stated that the saving

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page 34 where Dr. O'Rourke recommends: "The State levy taxes on the basis of uniform assessment practices to pay for medical dependency."

[33] 42 U.S.C.A. 1396a(b)(3) states: "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan - (3) any residence requirement which excludes any individual who resides in the State."

of money cannot justify an otherwise invidious classification. *Shapiro, supra* at 394 U.S. 633. See also *Rivera v. Dunn*, 329 F. Supp. 554, 558 (D. Conn. 1971), *aff'd mem.*, 404 U.S. 1054 (1972).

B. ADMINISTRATIVE CONVENIENCES DO NOT SATISFY THE COMPELLING INTEREST TEST

The Arizona Supreme Court in the present case stated:

> "How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate." *Maricopa County, supra* at 108 Ariz. 376, 498 P.2d 464.

Yet, in the affidavit of Barbara Beaty, who is the Controller of the Maricopa County Department of Health Services, she stated:

> "The data presented below are *estimates* due to the impossibility of determining the patient volume increases that will occur with the abolishment of the *residency requirement*. The cost figures are purposely conservative because of the intangibleness of the data." (A-12)[34]

This Court stated in *Shapiro*:

> "The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number

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[34]The Arizona Republic seems to have been able to develop estimates of the number of people moving into the County. Moreover, A.R.S. § 46-261.12(A) (added 1966) states: "The health department shall determine, measure and forecast medical needs, available resources for, and alternate financing methods of the indigent and medically indigent population of the State."

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of people who will require assistance in the budget year. None of the appellants takes a census of new residents or collects any other data that would reveal the number of newcomers in the State less than a year. Nor are new residents required to give advance notice of their need for welfare assistance. Thus, the welfare authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance. In these circumstances, there is simply no basis for the claim that the one-year waiting requirement serves the purpose of making the welfare budget more predictable. In Connecticut and Pennsylvania the irrelevance of the one-year requirement to budgetary planning is further under scored by the fact that temporary, partial assistance is given to some new residents and full assistance is given to other new residents under reciprocal agreements. Finally, the claim that a one-year waiting requirement is used for planning purposes is plainly belied by the fact that the requirement is not also imposed on applicants who are long-term residents, the group that receives the bulk of welfare payments.

In short, the States rely on methods other than the one-year requirement to make budget estimates." *Shapiro, supra* at 394 U.S. 634-635.

The lack of documentation for the durational residence requirement in relation to planning needs in the present case is similar to the deficiency found in *Shapiro, supra*.

Finally, the Appellees' Motion To Affirm indicates:

"The residence requirement is an absolute necessity to permit intelligent planning for the continuation of adequate health services in Maricopa County. Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment, while the long-term effect would be that indigent persons throughout North America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency

in Maricopa County. In either the long or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments." Motion To Affirm at pgs. 5-6.

In effect, the Appellees are arguing that the durational residence requirement is necessary to determine the bona fide intent of the traveler to settle in Arizona. This argument was raised in the *Crapps* case, *supra*, and the Court stated:

> "But the Supreme Court in *Shapiro*, has held that such a presumption may not be erected to determine domicil (or residency as the terms are used synonymously) because the thing presumed (domicil) does not necessarily follow from the established standards (one (1) year's presence). Neither does the lack of one year of residency prove than an individual lacks the present intent to make his domicil in Duval County. The resulting classification of otherwise equal indigents, and the resulting dissimilarity in treatment afforded the two classes of indigents, based on such an irrational distinction, is prohibited by

the equal protection clause. Moreover, since in moving from state to state persons are exercising a constitutional right, any classification which serves to hinder that right is unconstitutional in the absence of a compelling state interest." *Crapps, supra* at 314 F. Supp. 183.[35]

The Board of Supervisors states that the elimination of the durational residence requirement will mean that persons within the State will flood Maricopa County "for a limited period" seeking free health treatment.[36] However, a simple residency requirement would seem

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[35]See also *Green v. Department of Public Welfare of State of Del.*, 270 F. Supp. 173, 178 (D. 1967), where the Court said: "More accurate alternatives are available to ascertain an individual's true intentions without exacting the protracted waiting period with dire economic and social consequences to certain individuals living in the State."

[36]See note 8 *supra*. Also, Pinal County, which is contiguous to Maricopa County, has had to do without a durational residence requirement since March 1971.

to be an adequate method of meeting the alleged influx from within the State. Moreover the State of Arizona through its Department of Economic Security has set down guidelines to determine residency for welfare purposes. See Appendix "D". Certainly such factors would be even more trustworthy for persons moving within the State to Maricopa County "for a limited period of free health treatment."

In relation to persons moving to Maricopa County from outside the State, the same indices for residency, as are used by the Department of Economic Security, could be established. As has been shown in Appendix "A", the "73 Inside Phoenix" publication had no difficulty in determining the number of persons who come to Maricopa County without an intent to permanently reside.

The present case certainly isn't

comparable to the tuition-residence problem posed in *Vlandis, supra*. As is well known, students normally travel to a state for the specific purpose of attending a university. The very act of school attendance requires the presence of the student in the state for a considerable period of time. In conjunction with the physical presence problem, there is the following consideration:

> "To be domiciled in a state, one must have a bona fide intent to make that state his home. In the case of a student, the requisite intent is often very difficult to prove. During the years when a student is attending college, his plans for future residence are usually vague and uncertain. Also, little reliance can be placed on any statement of intent by the student, since the student knows that he will realize a substantial reduction in tuition by being classified as a resident." Note, *Non Resident Tuition, supra* at 1158.

In contrast, the act of seeking medical care does not mean that the

person is forced to remain in the State. Vagueness or uncertainty concerning a person's intention to settle in the State are not normally characteristics of a person seeking medical care.

In fact, the Arizona Legislature could not have been particularly concerned with the difficulty of proving a bona fide intent for residence when in 1965 the Legislature passed a law covering "Medical Assistance For Aged". See Arizona Revised Statutes, A.R.S. § § 46-261, 46-261.01 to 46-261.11.[37]

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[37] A.R.S. § 46-261.01(c) provides in part: "The medical care aspects of this program shall consist of supplemental and complementary medical assistance in conjunction with the provisions of Title 18, parts A and B of the U.S. Public Law 89-97." Public Law 89-97 is Federal Medicare. Medicare does not require the states to institute the type of program passed by the Arizona Legislature (see A.R.S. § 46-261 *et. seq.*) and therefore the State of Arizona was not bound by any Federal residence restrictions on durational residence requirements. However, it

(Cont'd to pg. 51)

The eligibility for "Medical Assistance For Aged" is found in A.R.S. § 46-261.02. It states:

> "In addition to qualifying under the terms of this article, medical assistance for the aged may be granted to any applicant who meets and maintains the following requirements:
>
> * * *
>
> 3. Has established residence in Arizona at the time of application."[38]

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should be noted that to the extent Arizona directly participates in the Federal Medicare program the State cannot impose a durational residence requirement. See 42 U.S.C.A. § 1382(b)(2)(b).

[38]The Appellees breifly mention the problem of fraud in their Motion to Affirm. However, A.R.S. § 11-297(c) provides: "Any person who files a false or untrue statement with the board for the purpose of obtaining hospitalization, medical care or out-patient relief for himself, shall be guilty of a misdemeanor." As was also stated in *Shapiro*: "Of course, a State has a valid interest in preventing fraud by any applicant, whether a newcomer or a long-time resident. It is not denied, however, that the investigations now conducted entail inquiries into facts relevant to that subject." *Shapiro, supra* at 394 U.S. 637.

There is a growing realization on the state as well as national level that a condition of good health is important not only from the view point of an individual state of well-being but is also vital to the individual's ability to work and maintain his role as an economic producer in society.[39] Relatedly, a mobile population seeking a better way of life has been a valuable feature of American history. Disadvantaged groups, striving for improved living

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[39]President Nixon closed his *Health Message* to Congress by stating in part: "Not only is health more important than economic wealth, it is also its foundation; it has been estimated, for example, that ten percent of our country's economic growth in the past half century has come because a declining death rate has produced an expanded labor force.

Our entire society, then, has a direct stake in the health of every member. In carrying out its responsibilities in this field, a nation serves its own best interests even as it demonstrates the breadth of its spirit and depth of its compassion." *Health, supra* at page 18.

conditions,[40] have traditionally provided the impetus for the development of this country. Americans still move for the same reasons--better jobs, superior climate and the opportunity to start afresh. (See Appendix "E" concerning the attractions of Arizona.)

The Arizona one year durational residence Statute for hospital and medical care severely penalizes those persons who have exercised their right to travel. The Statute is therefore unconstitutional.

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[40]The Valley National Bank, an Arizona institution, indicates that Arizona ranks among the leading states in six important indices of growth. See Valley National Bank, *Arizona Statistical Review*, 28th Annual Edition, (Sept. 1972) page 3.

CONCLUSION

The Amicus supports the position of the Appellants and submits that the judgment of the Court below should be reversed.

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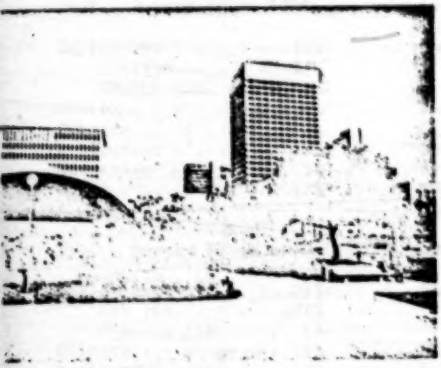
CONCLUSION

APPENDIX



METRO PHOENIX 1972 POPULATION UP 9.6 PER CENT!

Million-strong Metropolitan Phoenix (Maricopa County) again experienced an accelerating growth rate during 1972. This was the third straight year that the Metro area has seen its population grow at an increasing rate. During 1972, Metro Phoenix added a net population increase of 103,000 persons for a 9.6 per cent growth rate! The growth rates for 1971 and 1970 were 5.8 and 4.4 per cent respectively.

Not all of the population growth can be attributed to permanent residents. There was an increase of approximately 15,000 in the less-than-year-round resident category, which now totals 35,000 people. These people reside throughout the Valley area, although two-thirds can be found in Districts 1, 5, 8, 17, 18 and 19, and they comprise a very important consumer aspect of the Phoenix market. They require 15,500 housing units – with 35 per cent of these households occupying single-family houses, 5 per cent townhouses, 33 per cent multiple units and 27 per cent mobile homes. Sixty-three per cent own their dwelling unit. The average less-than-year-round resident has been living in Metro Phoenix intermittently for nearly five years, is somewhat older (median age head of household is 61.8 years, although 30 per cent are under 35) and has a median household income of $9,553. The income figure is lowered somewhat by the fact that 49 per cent are retired. However, 17 per cent earn in excess of $25,000, reflecting the 16 per cent who are professional people. Most households are quite small (averaging 2.27 persons) and 81 per cent do not have children under 18. A majority (57 per cent) reside in the Metro area for more than six months at a time.

There was, however, tremendous growth during 1972 of permanent year-round residents, who now total 1,140,000. Much of this could be attributed to a sizable increase in in-migration and a decline in out-migration, as the table at left indicates. The resulting net migration figure of 92,000 persons was nearly twice that of 1971. See pages 13-15 for additional information on our new comers.

It is anticipated that 1973 will be another year of outstanding population growth for Metro Phoenix. However, the growth rate is expected to decline somewhat. Nevertheless, the resulting 8.4 per cent increase will generate an additional 75,000 people. The Metro area will reach one and a quarter million people (including less-than-year-round residents) for the first time! Approximately 1,210,000 will be year-round residents.

METRO PHOENIX POPULATION

	Year End 1972	Year End 1971	Year End 1970
Resident Population in Regular Housing Units	1,123,000	1,034,000	973,000
Resident Population in Group Housing	+18,000	+18,000	+17,000
Total Resident Population	1,140,000	1,052,000	990,000
Less-Than-Year-Round Residents	+35,000	+20,000	+23,000
Total Population	1,175,000	1,072,000	1,013,000

METRO PHOENIX POPULATION GROWTH COMPONENTS

	1972	1971	1970
In-Migration (Newcomers)	147,000	113,000	100,000
Out-Migration	−55,000	−47,000	−75,000
Net Migration	92,000	66,000	25,000
Net Natural Increase	+11,000	+11,000	+11,000
	103,000	77,000	36,000

Source: Bureau of Economic & Business Research, Arizona State University

APPENDIX "B"

Reasons For Moving To Maricopa County - Reported in the "Inside Phoenix" Publications of 1967 through 1973.

1967 Survey taken 1966

Employment	37%
Health	20%
Climate	14%
Retirement	9%
Education	4%
Other	16%

1968 Survey taken 1967

Employment	37%
Health	20%
Climate	14%
Retirement	8%
Education	4%
Other	17%

1969 Survey taken 1968

Employment	34%
Had job	27%
Sought job	7%
Health	20%
Climate	14%
Retirement	10%
Education	5%
Other	17%

1970 Survey taken 1969

Employment	32%
Had job	27%
Sought job	5%
Health	21%
Climate	15%
Relatives live here	9%
Retirement	8%
Education	5%
Other	10%

1971 Survey taken 1970

Employment	33%
Had job	27%
Seeking job	6%
Climate	14%
Retirement	12%
Health	16%
Relatives	11%
Education	4%
Other	10%

1972 Survey taken 1971

Employment	39%
Had job	31%
Sought job	8%
Health	13%
Climate	11%
Relatives live here	10%
Retirement	7%
Education	6%
Other	14%

1973 Survey taken 1972

Employment	44%
Had job	33%
Seeking job	11%
Climate	15%
Relatives live here	11%
Health	10%
Retirement	6%
Education	3%
Other	11%

APPENDIX "C"

XI

The plaintiff GEORGE KNAPP is a diabetic and in need of insulin and has only enough insulin to last him through the 15th day of October, 1970.

XII

That the plaintiff EULA KNAPP suffers from fainting spells and epilepsy and on the 28th day of September, 1970, she suffered a fainting spell, and fell on her stove injuring herself severely and was admitted to the Pinal County General Hospital. That she will require care for her burns after the emergency situation passes; that she will also continue to require medical assistance for her epilepsy and fainting spells.

XIII

On May 29, 1970, the plaintiffs EULA and GEORGE KNAPP made application for medical care and that the plaintiff EULA KNAPP received a prescription. That on August 6, 1970 the defendants the "Board of Supervisors" refused to furnish the plaintiff with any medical care, for the reason that she was not a resident of Pinal County, Arizona for one year prior to the application. See Exhibit A.

XIV

That the plaintiff GEORGE KNAPP has also been advised by the Pinal County Board of Supervisors that he would receive no medical care of any kind since he has not been a resident of Pinal County, for one year.

XV

That the plaintiff BERTHA VALENCIANO made application for medical care on or about the 25th day of September. That before that she was seen in a clinic which she believes was at county expense and was given an examination by nurses, did not see a physican and was given

some medication which she believes to be vitamin pills. That she has since been advised that she would not be admitted to the Pinal County General Hospital for child birth and will not receive any further medical treatment. She was further advised by the "Board of Supervisors" to return to Nogales, Santa Cruz County, Arizona to have her child. See Exhibit B. That she presently resides with six children between the ages of 5 and 12 in Eloy, Pinal County, State of Arizona where said children attend school; that Nogales is approximately 110 miles from Eloy.

XVI

The plaintiffs are all indigents, on welfare, in need of medical care without resources, properties, assets, or funds whatsoever to pay for the present and future medical and hospital expenses.

XVII

That the defendants, the "Board of Supervisors, have the mandatory duty under the law of the State of Arizona to provide for hospitalization and medical care of the indigent in need of medical care and hospitalization within Pinal County under provisions of Title 11, Chapter 3, Article 7 as amended of the Arizona Revised Statutes.

XVIII

That the defendant, the "Board of Supervisors" and its members thereof, have refused to accept the plaintiff BERTHA VALENCIANO as a patient in the Pinal County General Hospital, controlled and operated by said defendants, as required by law and have refused to provide the plaintiffs EULA KNAPP and GEORGE KNAPP with medical care as required by law, for the reason that the plaintiffs have not been residents of Pinal County, State of Arizona for a period of 12 months proceeding their demand for hospitalization and medical care as indigent sick.

XIX

That the said refusal and denial is based pursuant to the

APPENDIX "D"

7. Passports are acceptable evidence for verification of age and birthplace.

8. Insurance papers. The age stated on an application for insurance may be less than the actual age of the applicant, but seldom more. Therefore, anyone whose age appears from these records as 65 is in all probability at least 65.

9. Military Record or Discharge Papers from Military Service: Selective Service Records or Discharge Papers are acceptable for verification of age and place of birth. World War I selective service records may be requested by sending a completed DPM-329, Application for Search of 1917-18 Draft Registration Records, signed by the applicant, to: General Services Administration, Region 4, Federal Records Center, 221 St. Joseph Street, East Point, Georgia, Zip Code 30044.

10. United States Census Records: The U. S. Department of Commerce, Bureau of Census supplies the department with Application for Search of Census Records, which carries our form #DPM-311. The form has instructions for completing on the reverse side. Please note the form must be signed by the applicant and he must pay the fee for search. Other means of obtaining birth date and place of birth should be exhausted before if is suggested that the applicant obtain information from census records.

11. Other Documentary Evidence for Verifying Date of Birth and/or Place of Birth: An individual's age is shown on voting registrations, automobile operator's license, hunting license and fishing license. The date and place of birth of a parent is usually shown on the birth registration of a son or daughter. Other records which will provide such verification are: Hospital, fraternal organizations, employment, civil service, homestead applications, school record and other public or legal records.

12. Notarized Statements: Notarized affidavits from non-related persons who have known the applicant over a long period of time will be accepted when there is no conflicting evidence as to date and place of birth.

3-1103 Residence:

1. Residence is a matter of intent and physical presence. Physical presence is self-evident. Intent is more difficult to determine, but can usually be established by the applicant's actions since coming to Arizona. The following would be considered good indicators of intent:

   A) renting or buying a home or other property in the state,
   B) moving some furnishings and other possessions from previous residence to Arizona,
   C) enrolling children in school here,
   D) licensing an automobile here,
   E) obtaining an Arizona drivers license,
   F) accepting employment here,
   G) registering to vote here,
   H) joining a local church,
   I) joining a local union.

There are other actions which will also give an indication of where the individual or family intends to make their home, which may be used to establish their intent.

APPENDIX "E"

ARIZONA PROGRESS

VALLEY NATIONAL BANK

MORE THAN 130 OFFICES — DEPOSITS OVER $2 BILLION

A monthly, factual report of the Arizona economy, compiled by the Valley National Bank of Arizona

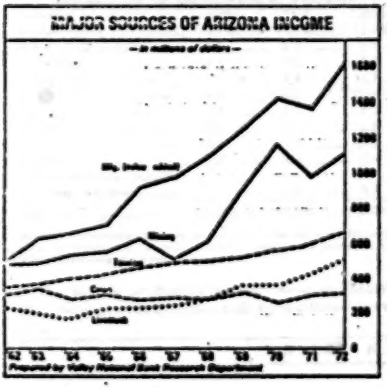
Research Department — JUNE-JULY, 1973 — *P. O. Box 71, Phoenix 85001*

The Growth Of Job Opportunities In Arizona

In the key economic indices of population, employment, and personal income, Arizona consistently over the past two decades has ranked among the fastest growing states in the nation. In recent years, moreover, Arizona's economic growth rate has accelerated. The success factors which are basic to Arizona's rapid development are:

- a sunny, mild climate with low humidity which has attracted new residents and tourists as well as new industry;
- and, progressive state and local government which has created a favorable atmosphere for business and workers alike.

One of the important strengths of the Arizona economy is diversification. Manufacturing has moved to the foreground as the state's leading income producer, but mining operations, agriculture with farming and ranching both major industries, and tourism and travel, also play a leading role in the state's economy. In past years, in instances where one of these major sources of income experienced a temporary setback, the slack in the economy largely was taken up with expansion in another industry. Indications are strong that Arizona's economy will benefit further from diversification in the next five years, as it did in the past.



The Arizona economy in review:

	1968	1973	% Change
Population	1,482,000	2,035,000	+ 21.0%
Employment	567,500	780,000	+ 38.7
Personal Income	$5,062,000,000	$9,640,000,000	+ 90.4
Retail Sales	3,074,000,000	6,030,000,000	+ 96.2
Bank Deposits	2,592,000,000	5,650,000,000	+ 118.0
Agricultural Prod.	572,000,000	900,000,000	+ 57.3
Mfg. (Value Added)	1,110,000,000	1,960,000,000	+ 76.6
Mineral Prod.	618,000,000	1,200,000,000	+ 94.2
Tourism Expend.	500,000,000	700,000,000	+ 40.0

The Arizona economy projected forward:

	1973	1978	% Change
Population	2,035,000	2,450,000	+ 20.4%
Employment	780,000	960,000	+ 23.1
Personal Income	$9,640,000,000	$16,390,000,000	+ 70.0
Retail Sales	6,030,000,000	10,615,000,000	+ 76.0
Bank Deposits	5,650,000,000	9,430,000,000	+ 66.9
Agricultural Prod.	900,000,000	1,200,000,000	+ 33.3
Mfg. (Value Added)	1,960,000,000	3,000,000,000	+ 53.1
Mineral Prod.	1,200,000,000	1,800,000,000	+ 50.0
Tourism Expend.	700,000,000	1,000,000,000	+ 42.9

As shown in these tables, the business outlook for Arizona, and specifically for the state's metropolitan centers (Phoenix and Tucson), is excellent. The projections for the next five years indicate a vigorous upward growth trend, although in some areas a somewhat slower growth rate compared with the record performance of the last five years. Along with an increase in population,

- a further huge boost in personal income
- another sharp rise in retail sales
- and continued rapid expansion in industrial output.

For the worker, it means expanded job opportunities in virtually all types of employment—for the professional and technical trained worker, the skilled and semi-skilled, the sales worker, clerical worker, and also workers in other job categories.

1973 employment in Arizona is expected to average about 780,000. It will expand to around 960,000 by 1978—a net increase in five years of about 180,000 jobs. The growth in employment by industry:

Industry	*1973*	*1978*	*Change*
Manufacturing	107,000	150,000	43,000
Mining & Quarrying	23,500	26,000	2,500
Construction	59,000	53,000	– 6,000
Transportation, Utilities	34,000	40,000	6,000
Retail & Wholesale Trade	163,000	200,000	37,000
Fin., Ins. & Real Estate	39,000	50,000	11,000
Services & Misc.	120,000	156,000	36,000
Government	149,000	200,000	51,000
Agriculture	34,000	32,000	– 2,000
Other Domestics, Unpaid Family Workers	51,500	53,000	1,500
Total	780,000	960,000	180,000

Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.

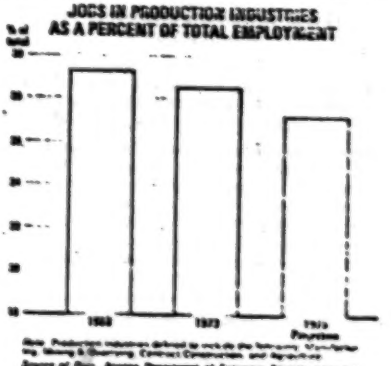
Job growth is forecast to outpace population growth—23% to 20%—and all industries except construction and agriculture should experience an absolute increase in number of workers. In the last five years, the proportion of the state's population that was employed moved sharply upward: out of every 100 Arizonans, 33 held jobs in 1968, and this increased to 38 out of every 100 by 1973. For the next five years, the proportion is forecast to stay relatively stable, climbing only slightly to about 39 employed out of every 100 population. Meanwhile, the distribution of employment *by industry* has been steadily changing, and is expected to change still further.

DISTRIBUTION OF EMPLOYMENT BY INDUSTRY

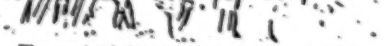
Industry	*1968*	*1973*	*1978*
Manufacturing	15.1%	13.7%	15.6%
Mining & Quarrying	2.7	3.0	2.7
Construction	4.8	7.5	5.5
Transportation, Utilities	4.8	4.4	4.2
Retail & Wholesale Trade	19.0	20.9	20.8
Fin., Ins. & Real Estate	4.4	5.0	5.2
Services & Misc.	13.9	15.4	16.3
Government	19.5	19.1	20.8
Agriculture	6.7	4.4	3.4
Other (Domestics, Unpaid Family Workers)	9.1	6.6	5.5
Total	100.0%	100.0%	100.0%

Source: Percentage figures calculated from Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.

The state's productive industries—manufacturing, mining, construction, and agriculture—show



a decrease in their share of total employment between 1968 and 1973, from 29.3% of all jobs to 28.6%. The employment share of these productive industries will drop further, from 28.6% to 27.2%, between 1973 and 1978—this partly the result of the continuing industrial revolution or technological and scientific advancement and development.



The service industries in Arizona—retail activity, finance, insurance and real estate, government, personal services, etc.—steadily are increasing their percentage of total employment. The service industries currently account for about three out of every four jobs in Arizona. The West, and the U.S. as a whole, also are increasingly moving to a services-oriented economy.

Job Opportunities By Occupational Group

The major increase in jobs in the next several years is expected to occur in the professional and technical areas, in clerical positions, and in personal services. The professional and technical workers, which includes teachers, doctors, lawyers, and scientists, among others, will comprise

the largest single occupational group in 1978, equal to 18% of total employment in Arizona.

Most of the professional and technical jobs require four years of college—similarly, many of the new sales positions will require a college education—and the bulk of the other job opportunities to be filled over the next five years will require community college preparation, high school vocational training, and/or trade school experience, as well as apprenticeship or on-the-job training.

Job Category	1973	1978	Change
Professional & Technical	133,400	172,000	+ 38,600
Managers & Administrators	78,800	93,100	+ 14,300
Sales Workers	60,800	73,900	+ 13,100
Clerical Workers	136,500	170,900	+ 34,400
Craftsmen (Skilled)	109,200	135,400	+ 26,200
Operatives (Semi-Skilled)	75,600	90,200	+ 14,600
Transportation	28,100	33,600	+ 5,500
Laborers (Unskilled)	47,900	53,700	+ 3,800
Service Workers	99,100	128,600	+ 29,500
Other	8,600	8,600	—
Total	720,000	960,000	+ 180,000

Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.

While an additional 180,000 new jobs are projected for Arizona between 1973 to 1978, there actually will be about 325,000 *job opportunities* due to retirements and other withdrawals from the total labor force, and deaths. These jobs will be filled by in-migrants to Arizona and also locally trained new entrants and re-entrants into the labor force. Whereas the professional and technical category will account for the largest number of jobs in 1978, there will be more job opportunities opening up in the clerical field than in any other employment category.

EMPLOYMENT OPPORTUNITIES IN ARIZONA
1973 to 1978

Job Category	Number	% of Total
Professional & Technical	62,600	19.1%
Managers & Administrators	27,000	8.3
Sales Workers	25,600	7.7
Clerical Workers	70,000	21.5
Craftsmen (Skilled)	38,000	11.7
Operatives (Semi-Skilled)	28,000	8.6
Transportation	8,000	2.5
Laborers	10,000	3.1
Service Workers	54,000	16.6
Other	3,000	0.9
Total	323,000	100.0%

Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.

Arizona — Mountain States, The Southwest, Or Pacific Coast?

Arizona appears to possess chameleon characteristics when it comes to identifying with a Region. Is Arizona in the Rocky Mountain States, or the Southwest, or Pacific Coast Region?

With rugged mountain ranges and lofty peaks scattered from border to border, the state can legitimately be considered part of the Rocky Mountain Region. The San Francisco peaks at an elevation of 12,670 feet, tower over the city of Flagstaff. In the northwest, close to the Grand Canyon, Mt. Trumbull rises to approximately 8,000 feet. Roof Butte, near Canyon de Chelly in northeast Arizona, climbs to 9,800 feet. Mt. Baldy in the eastern White Mountains rises to 11,500 feet. In the Coronado National Forest, Mt. Graham near the city of Safford, spirals to 10,700 feet; and Mt. Lemmon, outside of Tucson, is measured at 9,100 feet.

Arizona also can lay claim to being a part of the Southwest. It borders New Mexico, and Old Mexico. It is the heart of the Sun Country, and shares a common heritage with neighboring southwestern states in history of settlement, similarities in natural resources and development, and a likeness in desert surroundings. Tourism and travel brochures generally identify Arizona with the sun-bathed Southwest, and most local residents concur.

Some groups and individuals, however, refer to Arizona as part of the Pacific Region. Although Arizona is not directly on the Pacific coast, San Luis in the southwestern-most portion of the state, just south of Yuma, is only about 40 miles from the Gulf of California via the Colorado River. Yuma was once a seaport before the damming of the Colorado River and could be again if resolutions introduced in the Senate are acted upon. The California influence in Arizona is evident in the similarity of the lifestyles of the citizens in both states. More of Arizona's citizens have come from California than from any other state; similarly, California is the first choice of Arizonans who leave here.

With its diverse topographic, geographic and climatic characteristics, Arizona truly can be called one state in three regions.

(see map on page 4)